

Testimony of Chad Harrison, Councilman At-Large
Standing Rock Sioux Tribe
Before the House Committee on Energy and Commerce
Subcommittee on Energy Hearing on
Modernizing Energy and Electricity Delivery Systems:
Challenges and Opportunities to Promote Infrastructure and Expansion

February 15, 2017

I am Chad Harrison, Councilman At-Large for the Standing Rock Sioux Tribe (“Tribe”). The Tribe is a successor to the Great Sioux Nation, or *Oceti Sakowin*, and a signatory to several treaties, including the 1851 Fort Laramie Treaty, Sept. 17, 1851, 11 Stat. 749 and the Fort Laramie Treaty of 1868, 15 Stat. 635. In these Treaties, the United States recognized our territory and promised to protect us in our homeland. But the United States did not keep its word. Because of demands for gold, and later for agricultural lands, our lands were taken without our consent. By statutes enacted over time our Reservation was reduced to what it is today. *See* Act of Feb. 28, 1877, 19 Stat. 254; Act of Mar. 2, 1889, 25 Stat. 888.

The same happened when the Oahe Dam and reservoir were built. In 1942, Congress enacted the Flood Control Act, Pub. L. 78-534, 58 Stat. 887. This authorized the Army Corps of Engineers to construct five dams along the Missouri River, including the Oahe Dam and Reservoir. The Flood Control Act was implemented at Standing Rock in 1958. The United States took 56,000 acres of the Tribe’s reservation lands along the Missouri River for the Oahe project. Act of Sept. 2, 1958, Pub. L. No. 85-915, 72 Stat. 1762. The lands taken for the Oahe Project were the best remaining lands of the Reservation including timber lands and fertile farming lands. When these lands were flooded, hundreds of our families lost their homes. S. Rep. No. 102-267, at 188 (1992). The loss devastated the Tribal economy and culture.

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Thus, the Standing Rock Sioux Tribe has a long history of dealing with the United States when it seeks to grow, prosper and develop this Nation's resources for the benefit of others. But expanding and improving our Nation's energy infrastructure need not always be about burdening tribes. Instead, I am here today to talk about the opportunities that we have to develop infrastructure right; to do it in a way that one community does not always bear the burden of providing prosperity for our Nation. We are, of course, continuing to address the Dakota Access Pipeline which puts the risk of oil spills on the Tribe – as we are the community that is directly downstream from where the pipeline will cross Lake Oahe. We remain hopeful that this can be corrected by the courts and that the laws of our country will be followed.

But this example of injustice can also be viewed as a story of an opportunity lost. For almost three years, the federal government and the company ignored the concerns of the Tribe. The failure to consider and address tribal concerns at the outset, and consider alternatives that would not put the risk of the pipeline on Indian people, has led to controversy, and costly and uncertain litigation. No one can argue that it would have been better for everyone involved if the stakeholders had taken advantage of the opportunity to truly consult, listen and address the tribal concerns at the outset.

Standing Rock has always and will continue to work to protect our waters and our sacred places for the benefit of our children not yet born. But to be clear, the Tribe does not oppose economic development, energy independence or protecting our national security. What we oppose is development that is undertaken without our consent and in such a way that it is our

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community, our people, our cultural sites, and our natural resources that are put at the most risk, and when we are the ones who will pay the cost when something goes wrong. For too long, tribes have been forced to give so someone else can pursue development. The forced assumption on tribes and Indian people of this burden of prosperity and progress by others needs to stop. The laws and policies that are now in place present an opportunity for the cost of this prosperity to be shared fairly. If the federal government does not take advantage of the opportunity to follow the law and fully consider and protect the interests of the tribes, then the tribes and Indian people will continue to bear this burden.

The proposal to build the Dakota Access pipeline across the Tribes' taken treaty lands, and across the Missouri a half a mile upstream of our Reservation, illustrates the continued historic pattern of abuse. The Tribe conveyed its concerns about the routing this pipeline in such a sensitive location at the earliest opportunity, even before DAPL applied for the permits in December 2014. But decisions were made about the pipeline route without regard to the impact of the proposed pipeline on tribal rights. This became clear in December 2015, when the Army Corps of Engineers released a deeply flawed draft environmental assessment, drafted by DAPL.

This draft EA was remarkable for the fact that it said nothing at all about how close the pipeline would cross Lake Oahe just a half mile upstream from our Reservation. The draft EA said nothing at all about the pipeline's potential impacts on the water, which we drink and use for irrigation. The draft EA said nothing about the risk of oil spills on the fish and game and plants that our people, many of whom live below poverty, rely on to put food on the table and which

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are central to our religion and culture. In fact, the maps that were part of the draft EA completely omitted all information that would have shown the location of the Reservation relative to the pipeline's crossing. At the same time, however, the draft EA showed that DAPL had originally considered a different route, which would have crossed the Missouri ten miles north of Bismarck, North Dakota. Even though the north of Bismarck route would cross the Missouri River at a point where it is only 200-300 feet wide (instead of nearly a mile wide at the Lake Oahe crossing) DAPL abandoned the north of Bismarck route in part because of risks to downstream municipal water supplies.

We submitted numerous technical and legal comments on the draft EA to make sure that the Corps had the facts about our reliance on the waters of Lake Oahe, the sacred sites that would be affected by construction and operation of the pipeline, and the very substantial risks that an oil spill would create for us. We urged the Corps to prepare an EIS to assess route alternatives that did not cross the Missouri in a place that would put all the risks of an oil spill on Indian people who are still struggling to overcome generations of poverty and the related problems that occur with poverty. Other federal agencies agreed with the concerns we raised. The Interior Department and the Environmental Protection Agency criticized the draft EA and said that the Corps needed to do a more robust review with a focus on risks to water and to Tribal resources

Despite this, in July 2016, the Corps issued some permits to DAPL (but not an easement that they also needed), and released a final EA and a "finding of no significant impact" ("FONSI"). Although the final EA recognized that the Tribe existed, it still got the facts wrong.

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It incorrectly said that we relied mostly on wells for our water, even though we provided clear information about our extensive reliance on Lake Oahe for the drinking water in our homes, schools, community centers, IHS hospital and clinics, businesses (the casinos and hotel) and all tribal and federal public buildings. The final EA instead made conclusory statements dismissing the risks to the Reservation. But if there was no risk of an oil spill from this pipeline, why wasn't it safe enough to cross the Missouri River 10 miles upstream of Bismarck, instead of one-half a mile upstream of an Indian Reservation? The final EA never answers that question.

The Tribe immediately filed a lawsuit challenging these July decisions and accompanying EA/FONSI. And we continued to raise our concerns with the federal agencies. In September the Corps, Justice and Interior agreed that the issues we raised needed more evaluation, and on December 4, the Army announced that it would not issue the easement at Lake Oahe until the risks of the pipeline to our waters, and treaty hunting and fishing rights were fully evaluated, including a consideration of "alternative locations" for crossing the Missouri River that would avoid putting us at risk. The Army said that this review would occur via an EIS. The Army's decision was supported by a comprehensive legal analysis done by the Interior Department.

The decision made in December was really important for our people. It was the first time that the United States took advantage of the opportunity to determine if this pipeline might be done in a better way so that the Tribe, and our resources do not bear the burden of this pipeline. While proponents of the pipeline would argue that the December 4 decision caused delay, we

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would argue that the delay is the result of the company and the federal government failing to do this work when it should have been done. The Company assumed this risk when it chose to disregard the Tribe and our interests. Taking the time to do a job right is in our view good policy, that best serves National interests, not an unnecessary annoyance.

The Corps moved forward with the EIS process. It issued a notice on January 18, 2017 to invite comments on the scope of the EIS. The Tribe immediately assembled a team of technical and policy experts to participate in that EIS process, and formally requested cooperating agency status on the EIS pursuant to the regulations.

But within only days after the Inauguration, on January 24, 2017, President Trump signed a memorandum directing the Secretary of the Army to “review and approve, in an expedited manner, to the extent permitted by law and as warranted, and with such conditions as are necessary or appropriate” all permits and easements needed for this pipeline. On February 7, the Corps sent notice to Congress that it intended to grant the DAPL easement. And although the Corps’ normal policy is to wait 14 days after sending such notice to Congress, it waived that waiting period here. As a result, the easement was signed the very next day, on February 8. To the media, President Trump made clear that this had been his decision.

This latest action harkens back to a time when President’s exercised executive powers to take Tribal lands, remove Indian people from their homelands and terminate tribes. This action represents the lost opportunity to do this process right.

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We question why there is such determination to ignore the law and disregard the federal trust responsibility to tribes? Industry stakeholders and the President answer this question with the promise of jobs, and economic sustainability.

This pipeline is not bringing jobs to my people. The people doing this work will leave when their job is done, so there is no employment benefit for my community. There was an article published in the Dickinson Press that argued this pipeline does nothing for the economy of North Dakota and that shipping this crude oil by rail is much better for the economy of North Dakota. According to this article:

The pipeline itself is unnecessary because we have ample rail capacity to haul all of North Dakota's crude oil safely by rail with newer and safer rail cars. We are currently only shipping 3-4 oil trains a day out of North Dakota and we have the capacity to ship 100 trains a day with our state's 21 oil train loading facilities.

Over the past five years those loading facilities were built costing hundreds of millions of dollars and during the same time the BNSF railroad invested more than \$1 billion in North Dakota's track infrastructure to haul all this crude oil. So building the pipeline means hundreds of millions of dollars in stranded assets and lost opportunities for our state.

Building this pipeline adversely affects North Dakotans too. We have more than 200 railroad workers who are currently furloughed who would be put back to work if we shipped more oil by rail. While I support union construction workers who build pipelines, the truth is, most of these folks are from out of state, and this pipeline creates some jobs for a few months.

North Dakota railroad workers live here and shipping oil by rail will keep them employed for decades. Shipping oil by rail doesn't just benefit rail workers and our state's railroads, revenues from

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shipping oil helps pay for the maintenance of our entire rail system and that benefits other shippers like farmers who depend on good rail lines to get their crops to market. The Dakota Access Pipeline...well it will ship oil

John Risch, Dickinson Press (November 11, 2016).

Second, Indian people believe in this Nation; we have served our country's armed forces in higher proportions than any group in America. We want our economy and our Nation to do well. In believing in this Nation, we believe that we are a Nation of laws, which must be followed in order for our economy to be sustainable. The failure to follow these laws threatens the economic viability of our community. Just this last year, the Navajo Nation experienced an environmental catastrophe with the Gold King Mine disaster; a consequence of federal agencies and companies not following the law. Thus, the promise of economic development is a false one for my community, if the laws intended to protect our land, water and people are not followed.

Finally, the United States' blatant disregard of the law is just one more trauma that my people will endure. I ask my friends at this table to explain to the youth, who ran from Standing Rock to the Washington, D.C. to plead with the President and the Army Corps to take action to protect our lands, how the Army Corps can take unilateral action and move forward with this pipeline and not comply with the process that the Agency had said it would follow. I am tired of trying to explain the government's action to my youth, who have lost faith and hope.

What our youth know is that there was an option for this pipeline to go north of Bismarck (and go under the River for a shorter distance), but that option was not taken because it posed too

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much of a threat to Bismarck's drinking water. Somehow the pipeline was deemed too risky for Bismarck but not risky at all for our Reservation's drinking water. Perhaps you don't know what happens when children lose hope, but my community knows and we pray every day that what we fear the most does not happen. But if it does, the responsibility will lie with those who chose to ignore our concerns. It will not lie with the leadership of the Standing Rock Sioux Tribe or with the tribal leadership across this nation who stood with us.

As a tribal leader, I cannot lose hope, that is why we are pursuing our options in litigation to do this process right, but this should not be necessary. We hope that the United States does not miss the opportunity to get this right the next time. Thus, when the federal agencies and the industry seek to move forward with infrastructure in the future, you must truly consult with tribes. Consulting does not mean telling us what you are going to do and how you are going to do it. It means listening and making the necessary changes to ensure these projects do not harm our people, our lands and our resources. We ask that the law be changed to clearly require our consent before this kind of project can move forward. The Treaty promised my Tribe a permanent homeland; what is the point of a homeland if it is contaminated or we do not have water to drink?

At the very least, Congress should change the law to require that when infrastructure like this pipeline is proposed that the tribes have the right to impose conditions on the project to protect the tribal interests and resources. Already, the Federal Power Act requires that when a private hydropower license is issued within a federal reservation, FERC must determine that it

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will not interfere or be inconsistent with the reservation and that the relevant federal agencies impose conditions to further protect the reservation including Treaty protected resources.

I end this testimony as I began it. The law provides the opportunity for infrastructure development to be done correctly so that tribal communities do not bear the burden of development. We are deeply disappointed that the federal government and the company did not take advantage of this opportunity with the Dakota Access Pipeline.

Thank you for the opportunity to testify.